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इस भाग में अलग पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

MINISTRY OF LABOUR
AND
REHABILITATION
(Department of Labour)
NOTIFICATION

New Delhi, the 21st August, 1984

S.O. 615(E).—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Arbitrator in the industrial dispute between the employers in relation to the management of Madras Port Clearing and Forwarding Labour (Regulation of Employment), Scheme and their workmen, which was received by the Central Government on the 28th July, 1984 :—

BEFORE SHRI A. RANJITHAMONY,
DEPUTY CHIEF LABOUR COMMISSIONER
(CENTRAL) (RETIRED), ARBITRATOR,
MADRAS

In the matter of an industrial dispute between the Madras Port Clearing and Forwarding Labour (Regulation of Employment) Scheme and their workmen.

APPEARANCES :

For the employer —(1) Shri K.J. See'haraman,
Secretary, and

(2) Shri S. Shanmugham,
Executive Officer,
Madras Port Clearing and
Forwarding Labour
(Regulation of Employment),
Scheme.

For the workers —(1) Shri M. Kalyanasundaram M.P.,
General Secretary,
The Madras Harbour Workers'
Union,

(2) Shri G. Kalan,
General Secretary,
The Madras Port and Dock Workers'
Congress.

Dated the 26th July, 1984.

AWARD

Terms of reference :

The Government of India, Ministry of Labour and Rehabilitation, in its Order No. L-33013/1/83-IV(A)

dated 27-9-83, referred to this Arbitrator an industrial dispute between the Madras Port Clearing and Forwarding Labour (Regulation of Employment) Scheme (hereinafter referred to either as the "Scheme or as the "employer") and their workmen, represented by the Madras Harbour Workers' Union and the Madras Port and Dock Workers' Congress for arbitration under Section 10A of the Industrial Disputes Act, 1947.

The terms of the reference read as under :

"To determine the strength of casual workers required for Madras Port Clearing & Forwarding Labour (Regulation of Employment) Scheme, taking into consideration the volume of cargo handled and the changes in the method and mode of handling cargo in the Port of Madras."

2. According to the said reference, the Arbitrator should give this award within 2 months or within such period of time further extended by mutual agreement between the parties. Initially the unions and the employer took time to submit their respective statements. On a preliminary issue raised by the unions, a few hearing had to be held. Thereafter, there was a strike in the Port from 16-3-84 to 11-4-84. Consequently, the award could not be given within the specified period of 2 months. The parties, however, mutually agreed to extend the period from time to time and the final extension of time mutually agreed upon was up to 5-8-1984.

3. In order to comply with the provisions of Sec. 3(A) of Section 10A of the Industrial Disputes Act, 1947, I got a notice displayed on the notice board of the employer on 3-10-1983 requesting any other parties interested in the dispute to furnish their names and addresses to reach me by 15-10-83. No parties came forward excepting a few individual representations not relevant to the dispute under reference.

4. I held the first hearing on 7-11-1983 and subsequently as many as 8 hearings had to be held before finalising the award. At the final stage, along with the representatives of the employer and of the two unions, I also visited the call point where the workers are booked for duty and three of the sheds where the workers do their work. In addition, I also checked some of the relevant records maintained by the employer in their presence.

Port operations

5. Before examining the terms of reference, I would like to furnish briefly the various types of operations carried on in the Madras Port and how the workers are employed by the different agencies. The main agencies concerned with the handling of cargo and other allied or incidental operations in the Port are : the Port Trust management, the Stevedores, the Clearing and Forwarding Agents, the Steamer Agents and several other small employers.

6. The Port Trust management provides facilities for loading, unloading, embarkation and disembarkation and various other services to ships. The Madras Dock Labour Board provides labour for handling the cargo inside the hatch and for the chipping and painting work as also for the shore handling work. The Lab-

our Pool constituted under the Madras Stevedores' Association supplies labour for attending to the allied or incidental services on board the vessels. Similarly the Labour Pool functioning under the Clearing and Forwarding Labour (Regulation of Employment) Scheme provides Labour for loading, unloading, stacking, sorting etc., of import and export cargo in the harbour including wharf, sheds, transit sheds godowns, open plots leased or rented within the Port premises. The Clearing & Forwarding Agents also attend to the clearance of Port and custom formalities.

7. Different varieties of cargo are handled in the Port. General cargo comes in cartons, cases, bags, crates, bundles, drums, plastic containers etc. Steel is received in bundles or in pieces. Cement, sugar, bulgar wheat, cornflour etc. are received in bags. Wheat and fertilizer are received in bulk. Newspaper prints are received in reels. Timber is received in pieces. A substantial volume of cargo is handled through containers. The bulk cargo, viz., fertilizer and wheat is not handled by the Clearing and Forwarding Agents' Workers. Oil is handled separately in the Port.

8. The workers under the Clearing and Forwarding (Regulation of Employment) Scheme work in shifts. These workers are required to handle any type of cargo available in the shift in which they are posted. One time, they may assist the fork-lifts or other equipments in lifting and arranging the cargo. At another time they have to handle the cargo manually. They may work under covered shed one day and may be exposed to sun or rain on another day.

Decasualisation Scheme in general

9. The Port Trust management employ staff and labour directly under their control. In the earlier days, the Stevedores and the Clearing & Forwarding Agents in all Ports used to engage contractors or maistries to do their work. This system of employment by these Agencies resulted in the labour being kept on casual basis for years together under irregular employment without several benefits extended to other industrial workers. In consequence of the demand for provision of regular employment for these labour, the Government of India enacted the Dock Workers (Regulation of Employment) Act, 1948 (No. 9 of 1948).

10. First, in Madras Port, the labour employed for handling cargo inside the hatch were registered in a Pool under the Scheme framed under the said Act and the Dock Labour Board was set up to administer the Scheme. This Board started functioning from 1954. The Madras Unregistered Dock Workers (Regulation of Employment) Scheme was brought into force from 1-5-1969. Under this Scheme, the Dock Labour Board listed the mineral handling workers, coal handling workers and chipping and painting workers. However, now there is no coal handling work. At the next stage, the Madras Stevedores' Association brought into force a listing Scheme from 1968 and listed a few categories of workers, viz., Watchman, Supervisors, Receipt Clerks, Rigging Foremen and General Purpose Mazdoors, employed on board the vessels. This Scheme is still a private one and not covered under the Dock Workers (Regulation of Employment) Act.

Decasualisation Scheme for the workers of Clearing and Forwarding Agents

11. In early 1970, the Clearing and Forwarding Agents under a tripartite settlement with the Madras Harbour Workers' Union signed before the Regional Labour Commissioner (Central), Madras agreed for the introduction of a Decasualisation Scheme for the workers employed by them. On having further discussion with this union and another two unions, viz., Madras Port & Dock Workers' Congress and the Madras Port & Dock Workers' Progressive Union, the optimum strength of workers required for handling the then estimated quantum of cargo was determined by the Clearing and Forwarding Agents and the workers were listed under the Scheme in question which commenced working from the 1st shift on 14-4-1972. The Scheme since then is administered by an Administrative Committee consisting of a specified number of members from the Clearing and Forwarding Agents who are members in the Scheme.

12. The said scheme at the start consisted of 585 workers in 'A' list and 394 workers as casuals in 'B' list. In order to provide equal opportunity of employment and to ensure supply of adequate labour to all the members of the Scheme, the workers since then are being booked for duty on rotation. The 'B' list workers were given work, if any, available only after providing work for the 'A' list workers. This Scheme is also a private one similar to the Scheme under the Madras Stevedores' Association. It was stated that as a result of further demands from the unions, 770 workers (585 from 'A' list and the remaining 185 from 'B' list) were brought under a regular list and the remaining 209 kept as casuals in pursuance of another settlement signed with the unions on 30-10-72. These casuals were given work, if any available only after providing work for the regular listed workers.

13. During 1973, an industrial dispute between these workmen and the employer in question arose on some demands which were referred to the Industrial Tribunal, Madras (Shri T. Palaniappan, Presiding Officer) on 22-9-73 for adjudication. One of the demands referred to adjudication reads as under :

"Whether the demand of the above mentioned workmen for the grant of minimum guaranteed wages for 21 days in a month is justified? If so, what should be the total strength of workers required for running the Scheme, keeping in view the average availability of employment per month. What should be the procedure to be followed for reducing the surplus number, if any?"

14. The award given by the said adjudicator was published by the Government of India on 7-5-1974. At the time of adjudication, the scheme was having a strength of 743 workers in the regular listed category and 140 casuals. The Award fixed the strength required as 600 listed workers without any casuals and also fixed the minimum guaranteed wages for 21 days in a month and suggested for the introduction of a Voluntary Retirement Scheme as per which a retiring listed worker under this Retirement Scheme should

get an ex-gratia payment of Rs. 2,500 and in addition his service benefits. The casuals were not entitled to any such retirement benefits. The employer introduced the Voluntary Retirement Scheme in 1976 and continued it in 1977. Under this Retirement Scheme, 14 workmen retired in 1976 and 74 workers retired in 1977. The Scheme, however, continued to engage all the other regular listed workers and the casuals. Subsequently as a result of an increase in traffic in the Port, the employer increased the regular listed strength by 125 on 15-4-1979 and also absorbed another 25 workers as regular listed workers from the South India Corporation on 13-9-1979. Since April, 1979, there was no casual labour in the Scheme. During this year the traffic in the Port increased. The employer stated that they had recruited 400 casuals to cope with the increased traffic. The dispute under arbitration relates to these casual labour.

15. The regular listed workers are at present entitled to the following benefits, viz., 21 days minimum guaranteed wages, 15 days casual leave, 7 days sick leave, 30 days privilege leave, 3 sets of uniforms and one towel per year, foot-wear allowance of Rs. 42 per year, washing allowance of Rs. 10 per year, holiday wages for working on the holidays, medical facilities for self and family, Provident fund, gratuity, etc. The casual are entitled to a sum of Rs. 2-50 per day of attendance as conveyance allowance from June, 1983 apart from the wages for the days of their actual employment.

Preliminary issue raised by the unions

16. At the commencement of the hearing, the unions raised a preliminary issue that the Madras Port Trust should also be impleaded as a party to the dispute. I gave adequate opportunities to the parties to explain their respective views over this preliminary issue and gave my decision that the Port Trust management need not be impleaded as a party. The unions were, however, particular that I should give a written decision to this effect so that they could continue their arguments in respect of the terms of reference. Accordingly I have given my written decision on 5-3-84 on this preliminary issue, a copy of which is furnished in the Annexure to this Award.

17. The unions thereafter raised another point explained herein. Both the unions and the employer have recently set up a Committee, consisting of representatives from both sides and also a representative from the Madras Port Trust, to fix the manning scale for each item of work executed by the employer. The unions wanted that first this Committee should meet, discuss and fix the manning scale so that the arbitrator could decide thereafter the terms of reference on the basis of the manning scale fixed. The employer's representative expressed the view that both the issues, that is, one before the said Committee and that before the Arbitrator, need not be clubbed together, that it would take some time for the Committee to complete its task and argued that it would be desirable that the Arbitrator should give his decision independently. After hearing the parties, I also felt that fixing the manning scale might take some time. In case the said Committee could not reach consensus in regard to any item of work, then it would further be delayed. Further, the Arbitrator can take a decision over the issue before him independently. Conse-

quently, I requested the parties to proceed with the issue before me without waiting for the decision from the said Committee. Accordingly the hearing continued.

Arguments of the unions on the terms of reference

18. According to unions, there is ample work in the Port for giving sufficient employment to all the casual labour in question. Their arguments are based on the following points.—

- (i) Several items of work which fall within the purview of the Scheme are being done by some Clearing and Forwarding Agents by employment of labour not drawn from the Scheme but from outside. If in all such items of work, the Clearing & Forwarding Agents engage the scheme labour, it will generate more employment.
- (ii) Some Clearing and Forwarding Agents are adopting a clandestine practice by under-demanding of scheme workers and getting their work done by employing private labour along with the scheme workers.
- (iii) Often, the scheme managing authority are not supply the strength of labour as requested for by the Clearing & Forwarding Agents but reduces the strength.
- (iv) Several items of work now being done in the Port which were left out from the scope of the Scheme should be brought within the Scheme.
- (v) Vacancies arising on account of natural wastages in the regular listed category, if filled, would give employment to some more workers.
- (vi) There was a spurt in cement and sugar cargo import a few years back and there is every likelihood of another spurt in the near future.
- (vii) Good prospects for traffic growth in the Port are anticipated.
- (viii) New Schemes for addition of a berth and Container Dock Expansion, on execution, would generate more employment.
- (ix) Manning scale, on fixation, would require more men.
- (x) The Settlement signed on 11-4-84 between the Government and the Federations envisages the merger of the Scheme in question with the Madras Dock Labour Board which is in urgent need of more men.

19. The unions cited a few instances alleging unauthorised employment of outside labour by employers like Oil & Natural Gas Commission, Taylor & Company, Binny & Co., Shaw Wallace & Co. The unions also stated that several items of work such as recovery and bagging of grain and cement, handling of barytes now being done by Oil & Natural Gas Commission, reconditioning of sugar bags, weighment,

sorting and marking of cargo etc. can be brought under the purview of the Scheme and that inclusion of all these items of work within the Scheme would generate more employment for the labour in the scheme. The unions lastly emphasised that having recruited the additional 400 casuals when the Scheme was in need of them and having kept them in service so long, the employer should explore all possibilities to retain them in service and to regularise them.

Arguments of the employer :

20. The employer's representative argued that only one or two cases of unauthorised employment of labour were brought to their notice and that in such cases they took immediate remedial action and emphasised that arriving at a conclusion from such stray cases that the Clearing & Forwarding Agents are adopting this practice as a regular feature would be erroneous and that the regular listed workers from the Pool would not themselves tolerate such unauthorised employment as it would directly affect their employment potential and earnings. In regard to the question of underbooking of labour strength, the employer's representative stated that the Clearing & Forwarding Agents were not resorting to such underbooking and further stated that when one or two cases were brought to their notice, the Scheme authority took immediate remedial action. He also stated that in certain occasions, the Clearing & Forwarding Agents, after indenting for a particular strength of men, would find the need for more men, as the cargo received would be in a more damaged condition requiring more men to handle them and that this would be known only in the course of the work. Regarding barytes handling by Oil & Natural Gas Commission, the employer's representative stated that the Port Trust and the Dock Labour Board have accorded exemption to this Organisation permitting them to handle their material by themselves and that they have also given them similar exemption. He also refuted the allegation that the Scheme authority was reducing the labour strength as demanded by the Clearing & Forwarding Agents.

21. According to the employer filling up the vacancies arising out of natural wastages would further reduce the employment potential of the regular listed workers who are just getting 14 or 15 days of employment a month as against the minimum guaranteed wages of 21 days and even after fixing the manning scale, one can expect only a marginal variation in the employment potential of the regular listed workers and these factors would not in any way improve the employment opportunities for existing casual labour.

22. Further according to the employer's representative, the cargo-mix handled in the Port and the introduction of Container Service which is being stepped up further in the future would, in consequence, continue to affect the employment potential of the workman even if there is any increase in the traffic. The employer's representative further stated that the additional expansion schemes planned by the Port may be for the specialised cargo and not for the general cargo which is handled by the Clearing & Forwarding Agents. As regards the reference made by the unions

relating to the 11-4-84 settlement concerning the proposal of merging the Scheme in question with the Madras Dock Labour Board, he did not express any view stating that it was a matter to be dealt with by the Government. As regards the view that the casuals in question should be retained and regularised on the ground that they were recruited in 1980 and retained in service since then, the employer's representative argued that these casuals were clearly informed at the time of recruitment that they would be kept in service as long as they were having sufficient work and further emphasised that retaining or regularising them in service when there is practically no work would impose an unbearable burden on the trade.

23. With these arguments, the employer's representative sought to explain that practically there was no scope either for the absorption of these casuals in the regular listed strength or for retaining them further in service and emphasised that, in these circumstances, there is no need to keep any of these casuals in question on roll.

Examination of the arguments of the unions and the employer :

24. This is a case involving the employment of as many as 384 casual workers who have been anxiously hoping for a regular service during the last 4 years. (The strength of 400 casuals added in February, 1980 has come down to 380 at the time of making the reference to arbitration). Secondly, in times of increasing un-employment in the country, no one would like to leave a place which gives a faint hope of a regular service even at a far distant date. Thirdly, regular employment within the Port gives a lucrative earning. Fourthly, men on regular employment get a minimum guaranteed wages for the specified number of days in the month, attendance wages on other days and several other benefits. In these circumstances, the issue in question, no doubt, requires a detailed analysis and also a sympathetic consideration. At the same time, factors like the capacity of the trade to bear the additional burden, the pattern of employment provided to workers under other similar agencies functioning within the Port, repercussions, if any, arise for the regular listed category workers and whether the casuals in question have any scope for sufficient employment opportunities in the near future are equally important and these factors also require a similar detailed study. I have, therefore, not only examined the arguments of both sides carefully and in depth but also visited a few workspots to study the actual situation and personally checked several documents maintained by the Scheme authority.

25. I may now examine the various points raised before me by the parties to the dispute. One of the important points raised by the unions was about the large-scale unauthorised engagement of outside workers by some of the Clearing & Forwarding Agents. One or two instances of such employment were cited by the unions. The point for a serious consideration is whether, at the present day, the regular listed workers would like to lose their lucrative earnings by allowing outside workers to be employed along with them as a regular feature particularly when they themselves are getting work only for 14 or 15 days in a month.

If such employment is possible it cannot be done without the large-scale connivance of these workers as well. Whenever, such cases, a few only, were brought to the notice, remedial action had been taken by the Scheme authority. I am, therefore, of the view that no absolute reliance can be made on this argument to support the view that there is a large-scale regular unauthorised employment of workmen by some of the Clearing & Forwarding Agents.

26. I would, however, like to suggest that the Scheme should have at least a few Supervisors specifically nominated to go round the work places at regular intervals to ensure that no outside labour is employed by the Clearing & Forwarding Agents. Secondly, where a Clearing & Forwarding Agent had employed workers unauthorisedly, there should be code to take serious action against him. Thirdly, no Clearing & Forwarding Agent can pretend to be ignorant of the rules for employment of labour in any cargo handling work within the Port premises and employ the labour from outside. Whenever a Clearing & Forwarding Agent wants to do cargo handling work within the Port premises by any outside labour, he should consult the Scheme authority whether it was permissible for him to employ such labour and if permitted, then only he should take the outside labour. Where any regular listed workers are found indulging in the unhealthy practice of conniving with any Clearing & Forwarding Agent for allowing unauthorised workers to work along with them, the unions and the Scheme authority should exercise control over them so as to deter them from indulging in such unhealthy practice.

27. Another point stressed by the unions is the employment of casual workers by different agencies on jobs which could be brought within the fold of the Scheme in question. According to unions, at least 2,000 casual workers are employed in such jobs. Apart from giving an oral statement regarding the figure of employment, no other evidence was let in to support this figure. The unions seem to believe that if these jobs are brought within the purview of the Scheme, the casual labour in question would ample opportunity of employment. It must be noted that in all these jobs, another set of casual workers are already employed by the respective employers. Assume that some of the jobs are included in the Scheme, then those labour already performing the work will have a better claim for enlistment in the Scheme. Therefore, I am of the opinion that bringing within the scope of the Scheme any new set of employment is not going to solve the problems of the casual labour in question. I may, however, mention that when several hundreds of workers have been brought under one decasualised scheme or the other, the left-out categories of workers also deserve enlistment in a similar scheme.

28. The union representatives requested for several types of voluminous statistical data from the scheme authority in order to prove their statement regarding employment of outsiders by the Clearing & Forwarding Agents and cutting down the strength of labour from the indented number by the Scheme authority. The employer's representative explained the futility of collecting these data. It is a well-known fact that the volume of cargo in port handling operations widely fluctuates from time to time or even from shift to shift.

in the same day and from cargo to cargo. First, all booked workers must be at the place of work at the appointed time and available for work throughout the shift. The lorries or other vehicles bringing the cargo in or taking the cargo out must be available for continuous operation in the shift. If bunching of vehicles occurs, there will be delay in the loading/unloading operations. If the vehicles arrive at long intervals, the workers will have intermittent work. If full load of work is not available in any shift, which is not an uncommon feature in clearing and forwarding of cargo, the out-turn during the shift will be less. The Port Trust employees operating fork lifts or other cargo handling equipments should also be available continuously in the shift. The piece-rate, fixed for different cargo are not uniform. Some times the cargo subjected to more than one operation within the port premises itself by the Clearing & Forwarding Agents. The unions felt that the statistical data like the total number of manshifts worked and the total tonnage handled cargo-wise and employer-wise etc., in a specialised period would help them to arrive at the conclusion whether the workers were under-booked or not. For the reasons stated herein, that is, cargo handling operations widely fluctuate from cargo to cargo and from time to time, I do not think that these statistical data would help in arriving at any correct conclusion.

29. At the call point, I also personally checked the relevant records in the presence of the representatives from the unions and the employer and also questioned the Supervisor then on duty in order to ascertain whether there were any cases of under-booking by the Clearing and Forwarding Agents and whether the Scheme authority would reduce the supply of labour from the number of labour asked for by any of these Agents. By cross checking several records and from the reply given by the Supervisor, I observed that the demands of these Agents were fully met at all times except in one occasion during this year when both the combined strength of regular listed labour and the casual labour were found short by 15 or so compared to the total demands from these Agents and, consequently, one or two Agents were not supplied with the labour on that occasion. It was alleged by the unions that no records would be kept when the demand was reduced and the supply effected and that the requisition in such circumstances would be got re-written to give the reduced figure. To act upon such oral allegations without being supported by any other evidence or drawing a conclusion from one or two instances that such occurrences are of a daily feature would serve no purpose. If at all such adjustments take place and if outside labour is employed along with the regular listed workers, the remedy lies in speeding up the fixation of the manning scale and implementing it apart from taking other remedial measures.

30. Regarding the suggestion of the unions that if the vacancies remaining so far unfilled and those falling vacant during this year are filled, some more workers would get into the regular listed strength. This may be true. But with the decline in the manual handling operations, the employment potential of the regular listed workers has been considerably affected. Consequently, the regular listed workers are now getting only 14 or 15 days of actual employment and draw wages for 21 days every month. The employer

is to pay for the remaining days of unemployment. Filling up the vacancies would further depress the employment of regular listed workers who may not be happy to face such a situation for long. If thus affects both the employer and the regular listed category workers. The only beneficiaries may be those few labour appointed to fill up the vacancies and it will not benefit the large number of casuals who will still remain outside without such regular appointment.

31. The particulars regarding the tonnage of cargo handled from 1974-75 to 1983-84 by the workers under the Scheme are furnished below :—

Total tonnage of cargo handled

(In lakh tonnes)

Year	Tonnage handled manually	Tonnage handled mechanically	Total tonnage handled
1974-75	9.78	3.90	13.77
1975-76	10.82	2.69	13.51
1976-77	7.24	3.12	10.36
1977-78	8.68	4.66	13.34
1978-79	14.82	6.27	21.09
1979-80	7.30	17.03	24.33
1980-81	8.98	12.63	21.61
1981-82	8.09	18.25	26.34
1982-83	8.14	18.17	26.31
1983-84	8.24	11.68	19.92

N.B. :—The Scheme workers sometimes handle the cargo on more than one occasion within the Port premises.

32. The above figures indicate a sudden rise of traffic in 1978-79 compared to the previous years and exceeded 26 lakh tonnes in 1981-82 and 1982-83 and again declined to 19.92 lakh tonnes in 1983-84. The anticipated traffic in the Port in 1984-85 is 22 lakh tonnes with an estimated annual growth at 6 per cent from 1985-86 to 1987-88 (as per information from the Madras Port Trust management). That means, the prospect of having any much higher volume of traffic during the next 4 years is not high compared to the volume of traffic handled in 1981-82 and 1982-83. Further, the general cargo which gives more employment to the labour in question is also not expected to improve during the next few years.

33. Another significant feature revealed from the data furnished in Para 31 above is the considerable fall in the cargo handled by manual operations from 1978-79 onwards. The percentages worked out year-wise of the cargo handled manually and mechanically out of the total tonnage of cargo handled are as follows :—

Year	Percentage of cargo handled out of the total tonnage of cargo handled	
	Manually	Mechanically
1974-75	71	29
1975-76	80	20
1976-77	70	30
1977-78	65	35
1978-79	70	30
1979-80	30	70
1980-81	42	58
1981-82	31	69
1982-83	31	69
1983-84	41	59

34. To a query for ascertaining the reasons for the fall in manual handling operations, the employer's representative stated that the workers are reluctant to do manual operations and that the increase in the traffic can be economically and speedily handled through mechanical operations. The Union's representative did not refute this statement excepting that relating to the economy of the operation. Steel, newsprint reels, tobacco cases, etc. are now being handled mechanically and cargo in bags are handled manually. Container service is also increasing from time to time. The reasons for the workers becoming averse to manual handling require a deeper study. Perhaps one of the reasons may be that as the workers get more and more wages, they dislike the habit of doing things manually unless there is no other way to do it. Secondly, mechanical operations give a much higher earnings to workers with less of physical strain. The employer prefers mechanical handling as such handling increases the productivity. Now having taken the help of mechanical means to do a major part of the work since 5 years—whether it is due to workers' aversion to do manual work or due to the employer's preference for more mechanical operations or due to the combination of both these factors—a switch over to manual means of handling more cargo will not be possible in the future. Unless the traffic in general cargo increases, the volume of work available for this category of workers cannot be stepped up. The chances for getting more general cargo traffic in the near future are also not very bright. If the workers show reluctance to handle also the general cargo manually, in course of time, further fall in the employment potential cannot be ruled out.

35. In pursuance of the Award given by the Adjudicator in May, 1974 vide para 14 above, the regular listed workers started getting the minimum guaranteed wages for 12 days a month from 1974. The minimum guaranteed wages was subsequently raised to 18 days from 1-4-79 and 21 days from 1-4-80. After raising the minimum guaranteed wages to 21 days a month, the regular listed workers continued to have the actual employment only for 14 or 15 days a month. In other words, the employer has to meet the wages for the remaining 7 or 6 days every month.

36. The registered workers of Madras Dock Labour Board get more than 21 days of work in a month. The listed workers under the Board also get work around 20 days in a month. Similarly, the workers under the Madras Stevedores Association also get more than 21 days in a month.

37. The Scheme started with 394 casuals in April, 1982 and continued with fluctuating strength of casuals since then. Finally, in April, 1979, all available casuals were absorbed in the regular listed strength. A new set of 400 casuals was appointed on 21-2-1980 on the ground of increased traffic. These casuals worked on a monthly average of 3.33 days in 1980, 1.88 days in 1981, 1.96 days in 1982, 3.06 days in 1983. The average employment was 2.03 days in January, 1984, 0.45 days in February, 1984, 1.69 days in March, 1984, 1.89 days in April,

1984 and 8.30 days in May, 1984. The increase in the employment in May, 1984 must have been due to the strike in the Port from 16-3-84 to 11-4-84. Even when the 400 casuals were appointed on 21-2-1980 their average employment was 2.63 days in February, 1980, 6.5 days in April, 1980 and declined steeply thereafter and reached 1.46 days in December 1980. That means, appointment of 400 casuals on 21-2-80 on the ground of increased traffic was much in excess of the actual need.

38. The adjudicator fixed the listed workers' strength at 600 in 1974 but the strength was always much higher than this number except for one year in 1978 as may be seen from the following figures.

Year	Strength of listed workers as in April of the year
1974	734
1975	727
1976	718
1977	680
1978	607
1979	604
	(strength increased to 750 in October 1979)
1980	749
1981	741
1982	722
1983	701
1984	684

39. It will be seen further from the figures furnished in Para 31 above that the volume of cargo handled increased considerably from 1973-79. The total strength of listed workers had also increased from 1980 as may be seen from Para 38 above. However, due to increased usage of mechanical handling, the average output per man per shift increased from 8 tonnes in 1973-74 to 22 tonnes in 1982-83 leading ultimately to a decrease in the man-power requirement. As the Scheme, however, continued to increase the strength of regular listed workers from time to time (excepting in 1978 and for some months in 1979), the obvious result of reduced employment opportunities has to be faced by these workers. At the same time, the number of days of minimum guaranteed wages has also been increased from 12 days in 1974 to 21 days in 1980.

40. From what I have explained in detail above, it will be evident that the monthly average employment of the casual labour in question has been considerably low. Immediately after their appointment in February 1980, the employment was for a few days during the first few months. Thereafter, the average monthly employment started declining and has now reached a very insignificant level. Any addition of workers to the existing regular listed strength would further depress their monthly average employment which is around 15 days as against the minimum guaranteed wages paid for 21 days in a month. There is also no scope for improving the employment potential of either the regular listed strength or of the casual labour in question in the near future. In these circumstances, I am of the considered view and accordingly I decide that no casual labour is required for the Scheme. These casuals have been kept in service

since February 1980 but they will not be eligible for any statutory financial terminal benefits because of the very low attendance put in by them during all these years. I would, therefore, specify that if, after the termination of the services of the casual labour in question, the employer wants to fill up any vacancies in the regular listed strength or to increase the existing regular listed strength or to recruit afresh any casual labour, he shall give the first preference to the casual labour in question. But if he brings within the purview of the Scheme any new items of work which involve any addition of workers whether in the regular listed category or as casuals, this direction will not apply and the employer is free to take his own decision keeping in view the circumstances then existing. I pass my award accordingly.

41. In the above circumstances, the parties will bear their own cost.

Dated this 26th day of July, 1984.

A. RANJITHAMONY Retired Dy. Chief Labour Commissioner (C).,

ARBITRATOR.

[No. L-33013/1/83-D. IV (A)]

V. S. AILAWADI, Jt. Secy.

ANNEXURE

Before the Arbitrator in the matter of an Industrial dispute between the clearing and forwarding workers and the Madras Port Clearing and Forwarding (Regulation of Employment) Scheme.

INTERIM ORDER

The Ministry of Labour and Rehabilitation, Government of India, New Delhi has referred the following industrial dispute to the undersigned for arbitration under Section 10-A of the Industrial Disputes Act, 1947 vide Notification No. L-33013/1/83-D-IV dated nil.

Specific matter in dispute :

"To determine the strength of casual workers required for the Madras Port Clearing and Forwarding (Regulation of Employment) Scheme taking into consideration the volume of cargo handled and the changes in the method and mode of handling cargo in the Port of Madras".

2. During the hearing held on 19-12-1983 and 3-1-84, the representatives from the Madras Harbour Workers Union and the Madras Port and Dock Workers Congress argued that the Madras Port Trust should also be impleaded as a party to the dispute. Shri M. Kalyanasundaram, M.P., and General Secretary of the former union argued as follows :—

"The Clearing and Forwarding Scheme is intended to supply labour for the clearing

and forwarding of cargo in export and import. The Port Trust Board has the complete authority over the area of the port and the various activities connected with the traffic. As the task of giving delivery and accepting cargo is the function of the port, the Clearing and Forwarding Agents only act for the Port Trust authorities. As regards the mode of accepting or despatching cargo, the Clearing and Forwarding Agents have no independent authority. This is entirely in the hands of the Port Trust. Further, the Clearing and Forwarding Agents are obliged to use the equipments supplied by the port and they should also act according to the regulations regarding timings as may be fixed by the Port Trust authorities from time to time. Revolutionary changes are taking place in the mode of accepting and delivering of cargo due to containerisation. Forever a century handling of cargo has been the prerogative for the workers inside the harbour. The system of shifting this system of work and stuffing the containers at places outside the premises of port area takes away the right of the workers in the harbour including the Clearing and Forwarding workers. It amounts to taking away the assets of the workers, namely, their employment without their consent. The Clearing and Forwarding authorities have no role to play in any on these matters. When the Arbitrator has been called upon to determine the number of workers employed under the Scheme, it is relevant to examine the various aspects connected with the clearance and forwarding of cargo in the port as a whole. For these reasons, the Port Trust is the Principal Employer for the Clearing and Forwarding workers and, therefore, the Port Trust should also be impleaded as a party to the dispute in question.

3. The representative from the Madras Port and Dock Workers Congress supported the above views expressed by Shri Kalyanasundaram, M.P., and General Secretary of the Madras Harbour Workers Union.

4. Shri R. G. Rajan, Legal Adviser, Madras Port Trust contended that the Port Trust should not be impleaded as a party to the dispute. His arguments may be summed up as follows :—

"The parties summoned to appear as parties to the dispute with reference to arbitration has to be considered under sub-section 3-A of Section 10-A of the Industrial Disputes Act 1947 and they could only be "employer" or workmen concerned in the dispute referred to in Section 10-A(3A) of the Act. There is no provision to implead a person who is neither an employer nor a workman to be impleaded as party to the arbitration proceedings. Section 18(3) is not

applicable for seeking to implead any employer/workmen as a party in the arbitration proceedings. The Madras Port Trust Board is functioning under the Major Port Trust Act and discharging its functions under the Act. Port Trust Board has to adopt several improved methods to accelerate the handling of the traffic in the Port including its import and export activities. But the Port Trust administration is not concerned in the instant dispute. The Madras Port Trust Board is neither the employer nor the workman concerned with the dispute in question and it cannot be impleaded as a party. Further, the contention that the Port Trust Board is neither the employer for nor the workman concerned with the dispute in question and it cannot be impleaded as a party. Further, the contention that the Port Trust is the Principal Employer for the Clearing and Forwarding workers and the Clearing and Forwarding is only a private agency to supply labour is not correct".

5. The Legal Adviser of the Madras Port Trust, however, stated that if it is necessary that any material, rules and regulations pertaining to the dispute in question are to be furnished by the Port Trust, they would consider production of the same before the Arbitrator if any notice is issued to them by the Arbitrator.

6. The simple point for decision is whether the Port Trust management should be impleaded as a party to the dispute in question. The dispute has been referred to arbitration by the Government under Section 3-A of Section 10-A of the Industrial Disputes Act. This notification has been issued on the basis of the joint settlement made by the Administrative Committee of Madras Clearing and Forwarding Labour (Regulation of Employment) Scheme and the Madras Harbour Workers Union and the Madras Port and Dock Workers Congress. The first party is the employer and the other two parties are the trade unions representing the workman employed under the Scheme.

7. At the time of signing this voluntary settlement by the two unions with the said management, the two unions should have considered the question of impleading the Madras Port Trust also as a party to the dispute and taken the decision. Secondly, the provisions of Sub Section 3A of Section 10-A under which the reference to arbitration has been made by the Government envisages that the employers and workmen who are not parties to the arbitration agreement but are concerned in the dispute should be given an opportunity of presenting their case before the arbitrator. It is difficult to agree that the Port Trust can be considered as an employer of the workmen in question. The trade union representatives consider the Port Trust as a Principal Employer. This does not make any alteration particularly with reference to the provisions contained in Section 3A of Section

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10A mentioned above. Under this Section, only the direct employer or the direct workmen can in my opinion, be impleaded as a party.

8. Thirdly, an arbitration award is binding on all parties summoned to appear in the proceedings as parties to the dispute vide Section 13(3) of the Industrial Disputes Act. If the Port Trust is summoned to appear as a party to the dispute, then the award of the arbitrator should be binding on the Port Trust management. In my opinion, the question of implementing the award by the Port Trust management will not arise in this case as the Port Trust management is not concerned with the determination of the strength of workmen under the Scheme in question.

9. Fourthly, in the earlier adjudication proceedings between the unions and the employer in question, the Port Trust was never called to be impleaded as party to such disputes. Fifthly, it is to be mentioned that all matters concerning the labour in question, namely, recruitment, fixation of wage structure, fringe benefits, terminal benefits' payment of wages, disciplinary action etc., are being done by the Scheme in question without any consultation or approval from the Port Trust management.

10. The terms of reference ask the Arbitrator to determine the strength of casual workers taking into consideration the volume of cargo handled and the changes in the method and mode of handling cargo in the Port of Madras. In any industrial undertaking, the method and mode of handling the work may be changing from time to time due to several reasons. The changes may be on account of the result of internal adjustments or external forces. Whatever may be the circumstances, the labour strength adjustment has to be done by the employer and not by anyone who is responsible for causing the external forces. Therefore, even if the system of handling cargo is changed at the instance of the Port Trust authorities, the Port Trust authorities cannot be impleaded as a party in order to determine the strength of labour employed by the Scheme and it is the sole responsibility of the Scheme to adjust its labour strength as may be considered necessary taking into account the circumstances like volume of cargo handled, changes in the method and mode of handling cargo etc.

11. Further, the Legal Adviser from the Port Trust who attended the hearing stated that if notice is given to the Port Trust to produce any documents or evidence etc., they would examine and furnish the same to the Arbitrator.

12. In view of what I have explained above, I am of the considered view that the Madras Port Trust cannot be impleaded as a party to the dispute in question and their acceptance to produce any material or evidence relevant to the terms of reference is itself adequate to deal with the terms of reference by the arbitrator.

Thereby issue my interim order accordingly.

